

### **REMARKS**

This responds to the Office Action dated January 21, 2010.

No claims are amended, canceled, and or added; as a result, claims 1-7, 9, 11-14, 21-28, 30-36, 38, 40-43, and 50-54 remain pending in this application.

#### **The Rejection of Claims Under § 103**

Claims 1, 2, 5, 11, 30, 31, 34 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kepler et al. (U.S. Patent No.7,103,589; hereinafter “Kepler”) in view of Achtermann et al. (U.S. Patent No. 6,615,274; hereinafter “Achtermann”).

Claims 3, 6, 9, 12, 13, 26, 32, 35, 38, 41 and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kepler, in view of Achtermann, as applied to claims 1, 11, 30 and 40 above, and further in view of Bondarenko et al. (U.S. Patent Application Publication No. 2004/0083479; hereinafter “Bondarenko”).

Claims 4, 14, 33 and 43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kepler, in view of Achtermann, as applied to claims 1, 11, 30 and 40 above, and further in view of Jiao (U.S. Patent No. 7,376,827; hereinafter “Jiao”).

Claims 7, 21-24, 27, 28, 36 and 50-53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kepler, in view of Achtermann and Bondarenko, and further in view of Jiao.

Claims 25 and 54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kepler, in view of Achtermann, Bondarenko, and Jiao, as applied to claims 21 and 50 above, and further in view of Robb et al. (U.S. Patent Application Publication No. 2003/0120502; hereinafter “Robb”) to Chu et al. (U.S. Patent No. 6,006,331; hereinafter “Chu”).

The rejections of each of the independent claims 1, 6, 11, 21, 26, 30, 35, 40, and 50 is premised at least in part on asserted teachings or suggestions of Kepler and Achtermann. Applicant respectfully traverses all of the claim rejections based at least in part on Kepler and Achtermann as these references do not provide the teachings or suggestions as asserted in the Office Action.

In particular, the Office Action cites col. 6, lines 21-24 & 30-34 and col. 14, lines 16-18 of Kepler as providing a teaching or suggestion of a plurality of possible identifiers each associated with a respective optimization technique of a plurality of techniques and included in each of the independent claims. The assertion is based on a route by field and identifiers of cities. However, route by field is used to identify geographic locations, such as cities and states. As provided in the cited portion in column 6 of Kepler, these fields are utilized in a process to ensure that only the minimum number of databases necessary to conduct a thorough search are searched. Although there may be numerous combinations of cities and states that may be identified Kepler deals with telephone directories, there is no teaching or suggestion that there may be a plurality of possible optimization techniques as specified in each of the independent claims.

The Office Action admits as much in numerous locations such as on page 4. This admission states, “Kepler does not disclose that the identifier is an optimization technique identifier associated with one of a plurality of optimization techniques, nor that the determining includes using the optimization technique associated with an optimization technique identifier.” However, Achtermann is provided for this purpose.

In citing Achtermann, the Office Action asserts that col. 5, lines 28-44 cures the admitted deficiencies of Kepler. The Office Action specifically asserts that the “unique ID” in this cited portion of Achtermann is the “optimization technique identifier” and that the route generated from the unique ID is the claimed route determination performed using the optimization technique identifier. However, a review of col. 5, lines 28-44, in particular lines 32-35, of Achtermann reveals that the unique ID is simply a transaction identifier “identifying the distribution transaction” and not an optimization technique identifier. Further, review of Achtermann at column 5, lines 35-37 reveals that “the distribution manager has available a multiplicity of redundant paths which allows it to optimize performance.” However, there is no mention of a plurality of techniques for optimization, only that there is a multiplicity of redundant paths. Further, there is no mention or suggestion that the asserted unique ID is used to select one of the redundant paths.

Thus, Applicant respectfully submits that contrary to the assertions in the Office Action, Achtermann fails to cure the admitted deficiencies of Kepler. The other cited references,

including Bondarenko, Jiao, Robb, and Chu are not asserted as providing any of the admitted deficiencies of Kepler which Achtermann fails to cure. Further, Applicant's review of these other cited references failed to reveal any such cures. Thus, Applicant respectfully submits that the Kepler, Achtermann, Bondarenko, Jiao, Robb, and Chu, alone and in combination, fail to support a *prima facie* showing of obviousness as required to sustain a 35 U.S.C. § 103(a) rejection of each of independent claims 1, 6, 11, 21, 26, 30, 35, 40, and 50.

Claims 2-5, 7, 9, 12-14, 22-25, 27-28, 31-34, 36, 38, 41-43, and 51-54 depend from patentable independent claims 1, 6, 11, 21, 26, 30, 35, 40, and 50 and are also patentable for at least the same reasons.

Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections and allowance of claims 1-7, 9, 11-14, 21-28, 30-36, 38, 40-43, and 50-54.


### **CONCLUSION**

Applicant respectfully submits that claims 1-7, 9, 11-14, 21-28, 30-36, 38, 40-43, and 50-54 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (612) 373-6938 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402-0938  
(612) 373-6938

By   
James D. Hallenbeck  
Reg. No. 63,561